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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,746	02/28/2005	Brenda C. Huska	ACE-21524	2066

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EXAMINER
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POLLICOFF, STEVEN B

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/525,746	<b>Applicant(s)</b> HUSKA, BRENDA C.	
	<b>Examiner</b> Steven B. Pollicoff	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8-19 is/are pending in the application.
- 4a) Of the above claim(s) 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/28/05</u>   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Species II directed to claims 1-6 and 8-19 in the reply filed on 9/6/06 is acknowledged. Claim 7 is withdrawn.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Claims 1-6 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by McCutcheon (US Pat 6,321,757).

With respect to claim 1, McCutcheon discloses a compartmentalized cigarette snuffer and receptacle comprising: a container having a storage compartment (McCutcheon Fig 1 ref 18) sized to receive cigarettes and cigarette butts therein and a cigarette snuffer compartment (19) containing mounted therein a heat sink means for extinguishing the lit end of a cigarette (20) when inserted into said cigarette snuffer compartment, said storage and cigarette snuffer compartments separated within said container by a dividing wall (Fig 3 not labeled but see line separating compartment 18 and 19), and each having an opening (Fig 1 generally) and a corresponding independently actuatable lid (ref 22 and 23 respectively) mounted thereon, each said lid releasably closable (ref 24,30,27 and 31) for selective actuation by a user between an

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open position providing access to the corresponding said compartment, and a closed position sealing closed in an air-tight fitment said corresponding compartment.

With respect to claim 2, McCutcheon discloses that the container and said dividing wall are rigid and wherein said container is a rectangular parallelepiped (Fig 1 generally).

With respect to claim 3, McCutcheon discloses that said lids are mounted on a common side of said container (Fig 2 generally).

With respect to claim 4, McCutcheon discloses that each said lid is pivotally mounted on a hinge mounted to said container (column 4, lines 14-19).

With respect to claims 5 and 18, McCutcheon discloses that each said hinge is a common hinge, common to both said lids and the lids are mounted on a common side of the container (Fig 2 where back wall ref 14 meets lids 22 and 23).

With respect to claim 6, McCutcheon discloses that each said hinge is a flexible hinge of flexible material (Fig 4 where lids 22 and 23 meet back wall ref 14).

With respect to claims 16 and 17, McCutcheon discloses that said dividing wall is a single common planar wall common to both said compartments (Fig 3 generally).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCutcheon (US Pat 6,321,757).

With respect to claims 8 and 9, McCutcheon discloses that said heat sink means is cylindrical having a closed (Fig 3 at ref 21) and open end (Fig 1 at ref 20), said open end aligned with said opening of the snuffer compartment. McCutcheon does not disclose that the heat sink means is metal. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose metal as the material for the heat sink means, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

With respect to claim 10, McCutcheon discloses that said container includes opposite end walls (Fig 3 ref 15 and 16) and wherein said cylinder is aligned parallel with and adjacent one end wall of said opposite end walls of said container, and wherein said dividing wall is adjacent said cylinder and parallel to said one end wall.

With respect to claim 11, McCutcheon discloses that 11 each said lid is pivotally mounted on a hinge mounted to said container (column 4 lines 14-19; see also Fig 1).

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With respect to claim 12, see rejection for claim 5.

With respect to claim 13, see rejection for claim 6.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCutcheon (US Pat 6,321,757) in view of Layshock (US Pat 6,446,793).

With respect to claims 14 and 15, McCutcheon does not disclose that the container and outer walls are manufactured of substantially transparent material. However, Layshock discloses that the container and outer walls are manufactured of substantially transparent material (Layshock column 5, lines 60-66). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of McCutcheon to include transparent outer walls, as taught by Layshock, for the purpose of allowing cigarettes and a cigarette lighter to be seen through the walls of the container.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCutcheon (US Pat 6,321,757) as applied to claims 1,5 and 18 above and further in view of Buckow (US Pat 1,039,892).

With respect to claim 19, McCutcheon does not disclose that said common hinge is located between opposite ends of said container on one side of said container, and wherein said lids extend from said common hinge to said ends of said container. However, Buckow discloses a pipe and tobacco case wherein said common hinge (Buckow Fig 4 ref 16) is located between opposite ends (ref 4 and 5) of said container on one side of said container, and wherein lids (ref 14 and 15) extend from said common hinge to said ends of said container. Therefore, it would have been obvious to

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one having ordinary skill in the art at the time the invention was made to replace the hinge lid arrangement of McCutcheon with the lid arrangement, as taught by Buckow, for the purpose of better preventing the accidental opening of one of the compartments since the opening are on oppose sides of the container (rather than on the same side of the container as seen in McCutcheon).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See pto-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

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Customer Service Representative or access to the automated information system, call  
800-786-9199 (IN USA OR CANADA) or 571-272-1000.

46P 10/16/06  
SBP

  
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Supervisory Patent Examiner  
Art Unit 3700